



**SAN BERNARDINO COUNTY
FLOOD CONTROL DISTRICT**

F A S

**CONTRACT TRANSMITTAL
LICENSE AGREEMENT**

FOR COUNTY USE ONLY

| | | | | | | | | | |
|-------------------------------------------|-------------------------------------|--------------|----------------------------------------|----------------|----------|---------------------|--------------------|-----------------|--------------------------|
| E | <input checked="" type="checkbox"/> | New | Vendor Code | | SC | Dept. | A | Contract Number | |
| M | <input type="checkbox"/> | Change | | | | | | | |
| X | <input type="checkbox"/> | Cancel | | | | | | | |
| County Department | | | | | Dept. | | Orgn. | | Contractor's License No. |
| Real Estate Services Department | | | | | | | | | |
| County Department Contract Representative | | | | | Ph. Ext. | | Amount of Contract | | |
| David H. Slaughter, Director | | | | | 7-7832 | | | | |
| Fund | Dept. | Organization | Appr. | Obj/Rev Source | Activity | GRC/PROJ/JOB Number | | | |
| | | | | | | P48255 | | | |
| Commodity Code | | | Estimated Payment Total by Fiscal Year | | | | | | |
| | | | FY | Amount | I/D | FY | Amount | I/D | |
| Project Name | | | | | | | | | |
| BARSTOW – Flood Control | | | | | | | | | |
| District – Zone 4 Mojave | | | | | | | | | |
| River | | | | | | | | | |

CONTRACTOR United States Marine Corps

Birth Date _____ Federal ID No. or Social Security No. _____

Contractor's Representative Southwest Division – Naval Facilities Engineering Command - Laura L. Boschen

Address 1220 Pacific Highway, San Diego, CA 92132-5190 Phone (619) 532-1640

Nature of Contract: *(Briefly describe the general terms of the contract)*

This license agreement is for one (1) year with four (4) one-year options to extend the term. The premises consist of approximately 4.5 acres of land for use by the Marines for a golf course driving range. The annual fee is \$550.00 with annual CPI increases occurring on each option exercised.

THIS IS NOT A CONTRACT
THIS IS A COVER
TRANSMITTAL ONLY

(Attach this transmittal to all contracts not prepared on the "Standard Contract" form.)

| | | |
|---------------------------|-----------------------------------|--------------------------------|
| Approved as to Legal Form | Reviewed as to Affirmative Action | Presented to BOS for Signature |
| ► SEE SIGNATURE PAGE | ► | ► |
| County Counsel | | Department Head |

Date _____

Date _____

Date _____

SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT

LICENSE AGREEMENT

LICENSEE: UNITED STATES MARINE CORPS
c/o Southwest Division
Naval Facilities Engineering Command
1220 Pacific Highway
San Diego, CA 92132-5190

DISTRICT: SAN BERNARDINO COUNTY
FLOOD CONTROL DISTRICT
Flood Control Operations Division
Attention: Flood Control Permit Engineer
825 E. Third Street, Room 108
San Bernardino, CA 92415-0835

PREMISES: Approximately 4.5 acres of land for use by the Marines for a golf course driving range.

TERM OF LICENSE: One (1) year with four (4) one-year options

COMMENCEMENT DATE OF LICENSE: June 15, 2003

SAN BERNARDINO CO. FLOOD CONTROL DISTRICT CONTRACT NO.

REV. 06/15/98
TYPED: 05/20/03

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Exhibit "A" Driving Range

Exhibit "1" Permit No. P-48255

Exhibit "2" Insurance

Exhibit "3" Hazardous Substances

LICENSE AGREEMENT

This license agreement is made and entered into by and between the San Bernardino County Flood Control District, a body politic and corporate, hereinafter designated as "DISTRICT" and United States Marine Corps, hereinafter called "LICENSEE".

WITNESSETH

WHEREAS, the LICENSEE is currently using approximately 4.5 acres of land for use as a golf course driving range and related uses along DISTRICT's right-of-way ("Right-of-Way") under Permit No. P-482055 issued by DISTRICT to LICENSEE and attached as Exhibit "1" and incorporated herein by reference; and,

WHEREAS, DISTRICT and LICENSEE now desire to enter into a license agreement for the use of a portion of the DISTRICT's Right-of-Way; and,

NOW, THEREFORE, in consideration of mutual covenants and conditions, the parties hereto agree to the following:

In consideration of the covenants and agreements hereinafter contained being fully kept and performed, and in consideration of the benefits to be derived by each party, DISTRICT does hereby grant to LICENSEE a non-exclusive license for all of that certain real property situated on approximately 4.5 acres of land located in a portion of Sections 11, Township 9 north, Range 1 West, S.B.M. of DISTRICT's Right-of-Way (the "Premises") as set forth on the attached Exhibit "A" commonly referred to as "Driving Range".

COVENANTS AND AGREEMENTS:

1. **USE:** The DISTRICT grants a license for the above-described Premises to LICENSEE for the purpose of constructing, operating and maintaining approximately 4.5 acres of land for use by the U.S. Marine Corps for a golf course driving range.

This license and the rights herein granted to LICENSEE shall be subject to the paramount legal duties and obligations of DISTRICT pursuant to the San Bernardino County Flood Control Act of 1939 (the "Flood Control Act"), including, but not limited to, the right to cross over and/or occupy the Premises with any and all equipment necessary in the preservation of the Right-of-Way without liability for any damages to LICENSEE's Facilities.

2. **TERM:** The term of said license shall be one (1) year commencing on June 15, 2003 and ending on June 14, 2004 ("initial term").

3. **OPTIONS TO EXTEND TERM:** DISTRICT gives LICENSEE four (4) options to extend the term of the license for one year terms, on the same provisions and conditions, except for the annual fee for the time of exercise of the applicable option, provided LICENSEE is not in default with respect

to any of the terms, covenants or conditions to be observed or performed by LICENSEE hereunder, by LICENSEE giving written notice of exercise of the option to DISTRICT at least ninety (90) days prior to the expiration of the preceding term. Said options shall be deemed to be independent and consecutive, with LICENSEE's right to exercise the second, third and fourth of said options terminating upon LICENSEE's failure to exercise the first option. The annual fee for each extended term shall be reestablished in accordance with **Paragraph 5, FEE ADJUSTMENTS**.

4. **FEES:**

A. LICENSEE shall pay to DISTRICT an annual fee in arrears in the amount of Five Hundred and Fifty 00/100 Dollars (\$550.00) payable for the term of this LICENSE.

B. If any fee is not paid when due and payable, LICENSEE shall pay to DISTRICT an additional Twenty-five and 00/100 Dollars (\$25.00) for each fee due as an administrative processing charge. The parties agree that this late charge represents a fair and reasonable estimate of the costs that DISTRICT will incur by reason of late payment by LICENSEE. Acceptance of any late charge shall not constitute a waiver of LICENSEE's default with respect to the overdue amount or prevent DISTRICT from exercising any of the other rights and remedies available to DISTRICT. Fees not paid when due shall bear simple interest from date due at the rate of one and one-half percent (1½%) per month.

5. **FEE ADJUSTMENTS:** The annual fee initially established at Five Hundred and Fifty 00/100 Dollars (\$550.00) shall be subject to an increase on the anniversary of the Commencement Date and each year thereafter, provided LICENSEE has exercised its said options as described in **Paragraphs 3, OPTIONS TO EXTEND TERM**, based on the change in the Consumer Price Index as provided below, but not decrease at the commencement of each year of the term and the extended term(s) ("adjustment date[s]") as follows:

The base for computing the adjustment is the Consumer Price Index ("C.P.I."), Pacific Cities and U.S. City Average, All Items, Los Angeles, Anaheim and Riverside, All Urban Consumers (1982-1984 = 100), published by the United States Department of Labor, Bureau of Labor Statistics ("Index"), which is in effect on the date of the commencement of the term ("Beginning Index"). The Index published most immediately preceding the adjustment date in question ("Extension Index") is to be used in determining the amount of the adjustment. If the Extension Index has increased over the Beginning Index, the annual fee for each extended term (until the next fee adjustment) shall be set by multiplying the minimum annual fee in effect prior to the adjustment date by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index. In no case shall the minimum annual fee be less than the fee in effect immediately prior to the adjustment date then occurring. On adjustment of the annual fee as provided in this license, the parties shall immediately execute an amendment to this license stating the new annual fee.

If the Index is changed so that the base year differs from that in effect when the term commences, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised

during the term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

6. **ACCEPTANCE OF PREMISES:** Upon the acceptance of the possession and occupancy of the Premises by LICENSEE, the same shall conclusively be deemed to be fit and proper for the purposes for which the same is hereby licensed and to be used with LICENSEE's acknowledgment, acceptance and understanding that the Premises is within a flood prone area which could result in severe losses to LICENSEE's Facilities (including the equipment and personnel of the LICENSEE) in the event of storms resulting in flooding. LICENSEE expressly waives and releases the DISTRICT, the County of San Bernardino ("COUNTY") and their authorized agents, officers, volunteers and employees against any and all claims or actions for property damage and/or personnel injury and/or death arising from any flooding in and about the Right-of-Way and for any costs or expenses incurred by the DISTRICT, COUNTY and/or LICENSEE on account of any flooding and/or claims and/or actions arising therefrom. The LICENSEE, notwithstanding the application of Section 1542 of the California Civil Code, which provides:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of the executed release which if known by him or her must have materially effected his or her settlement with the debtor."

expressly waives and relinquishes all rights and benefits afforded them by said Section 1542, and any and all similar laws of any State or territory of the United States. This agreement shall act as a release of future claims that may arise from the above-mentioned flooding whether such claims are currently known, unknown, foreseen, or unforeseen. The LICENSEE understands and acknowledges the significance and consequences of such specific waiver of Section 1542 and hereby assumes full responsibility for any injuries, damages, losses, or liability that they or their personnel may hereafter incur from the above-mentioned flooding.

7. **ASSIGNMENT:** This license shall not be assigned without the express written approval of the DISTRICT.

8. **DISTRICT'S ACCESS TO PREMISES:**

A. DISTRICT, or a duly authorized representative of the DISTRICT, reserves the right to enter upon the Premises at any reasonable time for the purpose of inspecting the Premises for conformance to license provisions and for carrying out any routine and emergency maintenance or construction repair work on the DISTRICT'S facilities that DISTRICT may deem expedient nor shall said DISTRICT be liable for damages to LICENSEE's Facilities as a result thereof.

B. DISTRICT's activities shall take precedence at all times, and when any work or activity must be performed to carry out the functions and purposes of the DISTRICT, LICENSEE must allow

same to be done without interference. DISTRICT shall give LICENSEE reasonable notice of impending activities whenever possible.

9. **MAINTENANCE/REPAIRS:**

A. The DISTRICT's maintenance roads will be available to the LICENSEE for normal and routine maintenance of the LICENSEE's Facilities by LICENSEE. Maintenance and inspection of Facilities installation will be the responsibility of the LICENSEE and regular inspections are required as necessary to ensure the improvements are maintained in a good and safe condition. Any damage to DISTRICT's facilities or facilities of others resulting from said maintenance activities shall be the responsibility of LICENSEE. If an installation becomes a hazard to DISTRICT's facilities or other users of operating Right-of-Way, the LICENSEE will be required to eliminate the hazard. Should maintenance activities be required during the period October 15 to April 15, work shall be undertaken within a five (5) day clear weather forecast. LICENSEE shall maintain or provide for flood watch when storm conditions threaten and have personnel and equipment available on a 24-hour schedule. LICENSEE shall notify DISTRICT in advance of its intention to make major repairs subject to DISTRICT's inspection and fees pursuant to the current fee schedule.

B. LICENSEE shall have ten (10) days from the creation of the need to repair to perform its obligation to repair under this paragraph, except that LICENSEE shall perform its obligations immediately if the nature of the problem presents a hazard, emergency or unsafe condition. If LICENSEE does not perform its obligations within the time limitations in this paragraph, DISTRICT can perform the obligations and has the right to be reimbursed for the sum it actually expends (including charges for DISTRICT's equipment and personnel) in the performance of LICENSEE's obligations. Without in any way affecting LICENSEE's duty to inspect, maintain and repair LICENSEE's Facilities regardless of whether any specific notice of need for maintenance or repair is provided to LICENSEE, the DISTRICT may request specific maintenance or repairs. Any such request may be made orally, by telephone or otherwise.

10. **RELOCATION:**

A. When LICENSEE's Facilities require relocation or protection because of DISTRICT's construction, the work shall be performed by the LICENSEE at its expense and whenever possible in advance of DISTRICT's work.

B. Portions of LICENSEE's Facilities, less than one thousand (1,000) feet in length, may be subject to relocation within the Right-of-Way if DISTRICT properly determines that the Premises are needed for a higher and better use in order to carry out DISTRICT's legal duties and obligations pursuant to the Flood Control Act. The cost any relocation shall be at LICENSEE's sole expense.

C. The DISTRICT has fee title to the Right-of-Way. The DISTRICT reserves the right to allow other uses of the Right-of-Way. These additional uses may require relocation or protection of existing facilities owned by LICENSEE. The cost of the relocation or protective work shall be the responsibility of the new applicant except as noted in **subparagraph b. above**. DISTRICT shall give LICENSEE prior notice of any contemplated new uses of the Premises, receive and consider LICENSEE' comments thereto, and to coordinate any new uses with LICENSEE.

11. **HAZARDOUS MATERIALS:**

A. Definition. For purposes of this agreement, the term "Hazardous Substance" means any (a) substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq. ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. ("RCRA"); Toxic Substances Control Act, 15 U.S.C. Sections 2601 et seq.; the Clean Water Act, 33 U.S.C. Sections 1251 et seq.; the California Hazardous Waste Control Act, Health and Safety Code Sections 25100 et seq.; the California Hazardous Substance Account Act, Health and Safety Code Sections 25330 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Sections 25249.5 et seq.; California Health and Safety Code Sections 25280 et seq. (Underground Storage of Hazardous Substances); the California Hazardous Waste Management Act, Health and Safety Code Sections 25170.1 et seq.; California Health and Safety Code Sections 25501 et seq. (Hazardous Materials Response Plans and Inventory); or the California Porter-Cologne Water Quality Control Act, Water Code Sections 1300 et seq., all as amended, (the above-cited California state statutes are hereinafter collectively referred to as "the State Toxic Substances Laws") or any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect, (b) any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court, (c) petroleum or crude oil other than petroleum and petroleum products contained within regularly operated motor vehicles, and (d) asbestos.

B. In connection with the license of the Premises by LICENSEE, (a) LICENSEE agrees and acknowledges that it has had an opportunity to investigate the Right-of-Way, Premises and their environs for the presence of any hazardous substance; (b) any and all reports, studies, analyses, estimates, maps, drawings, materials, etc. delivered by DISTRICT to LICENSEE preceding execution of this license are delivered to LICENSEE as an accommodation and not with the intent that such items be relied upon by LICENSEE, except to the extent that LICENSEE has independently confirmed the validity of such items; and (c) LICENSEE's decision to enter into this license is based upon the investigation, study and analysis of the Right-of-Way, Premises and their environs made by LICENSEE or its agents and/or independent contractors, and not upon oral or written statements or representations of DISTRICT. It is expressly understood by LICENSEE and DISTRICT that all statements and representations made by DISTRICT which are not included in this agreement (a) are intended by DISTRICT to be made as an accommodation to LICENSEE in DISTRICT's investigation and not in lieu of LICENSEE's investigation; and (b) are not to be relied and acted upon by LICENSEE.

C. LICENSEE shall not permit, authorize, or suffer at any time herein relevant the presence, use, manufacture, handling, generation, storage, treatment, discharge, release, burial or disposal on, under or about the Right-of-Way and/or Premises of any hazardous substance, or the

transportation to or from the Right-of-Way and/or Premises of any hazardous substance except as set forth in Exhibit "3".

D. LICENSEE agrees, in addition to those obligations imposed upon it pursuant to **Paragraph 18, HOLD HARMLESS**, herein, to indemnify, defend with counsel approved by DISTRICT, protect and herein hold harmless DISTRICT, its directors, officers, employees, agents, assigns, and any successor or successors to DISTRICT's interest in the Right-of-Way as it relates to Hazardous Substances as defined in **subparagraph 12A**, from and against all claims, actual damages (including but not limited to special and consequential damages), punitive damages, injuries, costs, response costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses of any kind whatsoever paid, incurred or suffered by, or asserted against, the Right-of-Way or any indemnified party directly or indirectly arising from or attributable to (a) any breach by the LICENSEE or any of its agreements, warranties or representations set forth in this license, or (b) any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan concerning any hazardous substance on, under or about the Right-of-Way caused by LICENSEE's use of the Premises, regardless of whether undertaken due to governmental action. To the fuller extent permitted by law, the foregoing indemnification shall apply regardless of the fault, active or passive negligence, breach of warranty or contract of LICENSEE.

E. Without limiting the generality of this indemnity, this indemnity is intended to operate as an agreement pursuant to Section 107(e) of CERCLA, 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364 to insure, protect, hold harmless and indemnify DISTRICT for any liability arising out of LICENSEE's use of the Premises pursuant to such sections.

12. **IMPROVEMENTS:** All improvements to the Premises that are directly related to the golf course driving range shall remain the property of LICENSEE. Upon termination of this license or any extension or renewal thereof, and the faithful performance of each and all of the terms, covenants and conditions thereof, the LICENSEE shall have the right to remove improvements directly related to the golf course driving range, and shall have a period of six (6) months, after such termination, within which to complete the removal of these items. Upon such termination, if the LICENSEE does not elect to exercise such right, DISTRICT shall either require LICENSEE, at LICENSEE's expense, to remove all such items, or elect to retake possession of the Premises together with all such items which shall thereupon become the property of the DISTRICT.

13. **DEFAULT AND RIGHT TO TERMINATE:**

A. If there should be any default in payment by LICENSEE of the fee provided herein, DISTRICT may give LICENSEE written notice of such default. This license will not be terminated if within ten (10) days after receipt of such written notice the LICENSEE shall cure the default or breach.

B. If LICENSEE should fail to perform, keep or observe any of the terms, conditions or covenants as set forth in this license, other than payment of fees as provided hereinabove, DISTRICT may give LICENSEE written notice to correct such condition or cure such default.

1. This license will not be terminated if within thirty (30) days after receipt of such written notice, the LICENSEE shall cure the condition or default.

2. If such condition or default should continue for thirty (30) days after receipt of written notice of default, DISTRICT may at its option elect to terminate this license. Such election to terminate shall not be construed as a waiver of any claim the DISTRICT may have against LICENSEE, consistent with such termination.

3. If, however, LICENSEE shall have commenced the elimination of such default within thirty (30) days after receipt of such notice and shall continuously and diligently proceed in good faith to eliminate such default, then the period for correction shall be extended for such length of time as is reasonably necessary to complete such correction.

C. If, however, in the sole discretion of DISTRICT, the problem represents a hazard or emergency, LICENSEE shall perform its obligations immediately. If LICENSEE fails to perform its obligations immediately, DISTRICT may perform the obligations and have the right to be reimbursed for the sum it actually expends (including charges for DISTRICT's equipment and personnel) in the performance of LICENSEE's obligations.

D. Upon any termination of this license, LICENSEE covenants and agrees to surrender and to forfeit this license, and deliver up the Premises peaceably to the DISTRICT immediately upon any such termination. If said LICENSEE shall remain in possession of said Premises after any termination of this license, said LICENSEE shall be deemed guilty of an unlawful detention of the Premises and shall be subject to eviction and removal, forcibly or otherwise, at any time thereafter, with or without process of law. In the event of the failure of LICENSEE to remove personal property, machinery or fixtures, if any, belonging to it from the Premises immediately upon any termination of this license, DISTRICT may remove such personal property and place the same in storage at the expense of LICENSEE and without liability to DISTRICT for loss thereof. LICENSEE agrees to pay DISTRICT on demand all expenses incurred in such removal, including court costs and attorney's fees and storage charges and/or without notice sell all or any part of said personal property at public or private sale for such prices as DISTRICT may obtain, and apply the proceeds of such sale upon any amounts due under this license from LICENSEE and to any expense incidental to the removal and sale of said personal property, with the surplus, if any, being refunded to LICENSEE.

E. The receipt by the DISTRICT of any fees or of any other sum of money paid by LICENSEE after any default, the termination and forfeiture of this license for any reason, or after the giving by DISTRICT of any notice to effect such termination, shall not waive the default, reinstate, continue or extend the term of this LICENSE, or destroy, or in any manner impair the efficacy of any such notice of termination as may have been given hereunder by DISTRICT to the LICENSEE prior to the receipt of any such sum of money or other consideration, unless so agreed to be in writing and signed by DISTRICT. Any act of the DISTRICT or its agents or employees during the term of this license shall not be deemed to be an acceptance or a surrender of said Premises, excepting an agreement in writing signed by the DISTRICT agreeing to accept such surrender.

14. **HOLDING OVER:** If the LICENSEE continues in possession of the Premises after the expiration of the term or after any termination of this license prior to the expiration of the term, and if said occupancy is with the consent of the DISTRICT, then LICENSEE shall be deemed to be holding the Premises on a month-to-month basis subject to all the provisions of this license, and the annual fee payable during such period of holding over shall be the same as the annual fee most recently payable prior to the date such holding over was commenced.

15. **LICENSES AND CERTIFICATIONS:** LICENSEE agrees that it will acquire and maintain those certifications, licenses, approvals and permits required by any Federal, State or local jurisdiction or authority for carrying out the purpose of this license. Failure to comply with this provision will constitute a default and right to terminate by DISTRICT under **Paragraph 14, DEFAULT AND RIGHT TO TERMINATE**, of this license.

16. **INSURANCE REQUIREMENTS:**

A. DISTRICT is a public entity and is self-insured.

B. LICENSEE is a public entity and is self-insured.

17. **HOLD HARMLESS:** LICENSEE agrees to indemnify, defend (with counsel approved by DISTRICT and COUNTY) and hold harmless the DISTRICT, the COUNTY and their respective officers, agents, volunteers and employees from any and all claims, actions, losses, damages and/or liability arising out of this lease from any cause whatsoever including the acts, errors or omissions of any person and for any costs and expenses incurred by the DISTRICT or the COUNTY on account of any claim therefore except where such indemnification is prohibited by law.

18. **TAXES, ASSESSMENTS AND LICENSES:** LICENSEE is a public entity and is exempt from paying any property taxes, assessments, fees, or charges, including possessory interest taxes, which may be levied or assessed upon any personal property, improvements or fixtures, if any.

19. **BUILDING AND SAFETY REQUIREMENTS:** All activities under this license must conform to all applicable rules, regulations, laws, ordinances, codes, statutes or orders of any governmental authority, Federal, State or local lawfully exercising authority over LICENSEE's operations. In the event that the LICENSEE's use of the Premises conflicts in any way, or is in violation of any of said rules, regulations, ordinances, statutes or orders, the LICENSEE shall remove or modify the installation to conform with the applicable regulations within thirty (30) days of receipt of written notice to do so from the DISTRICT. DISTRICT's determination of conflicting use shall be conclusive.

20. **GENERAL COVENANTS AND AGREEMENTS:**

A. At any time during the life of the license, the DISTRICT may revise, modify, or add provisions to the license as may be required to meet the DISTRICT's obligations for water conservation and flood control purposes so long as any revisions, modifications, etc., do not substantially interfere with LICENSEE's use of the Premises.

B. LICENSEE agrees not to use said Premises, or any part thereof, for any purpose which causes injury to any neighboring property, nor for any purpose in violation of valid applicable laws or ordinances.

C. No political signs shall be permitted on DISTRICT's Right-of-Way.

D. Uses granted to LICENSEE under this license are valid only to the extent of the DISTRICT's existing rights and may be subject to other existing easements and encumbrances. Rights granted to the LICENSEE are not exclusive.

E. Activities under this license are subject to any instructions of the Flood Control Engineer or his representative.

F. If the LICENSEE should refuse or neglect to comply with the provisions of the license, or the orders of the DISTRICT, the DISTRICT may have such provisions or orders carried out by others at the expense of the LICENSEE. All the terms, covenants and conditions set forth herein are to be strictly complied with by the LICENSEE. Any failure to comply therewith shall be grounds for immediate cancellation of the license.

G. This license is valid only to the extent of DISTRICT jurisdiction. Permits required by other interested agencies shall be the responsibility of the LICENSEE. **NOTHING CONTAINED IN THIS LICENSE SHALL BE CONSTRUED AS A RELINQUISHMENT OF ANY RIGHTS NOW HELD BY THE DISTRICT.**

21. **TERMINATION:** Either party may terminate this license at any time by giving the other party written notice of any termination pursuant to this paragraph at least ninety (90) days prior to the date of termination. LICENSEE shall perform all necessary removals or relocation within said ninety (90) days.

22. **INCORPORATION OF PRIOR AGREEMENT:** This license contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this license, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose.

23. **WAIVERS:** No waiver by either party of any provisions of this license shall be deemed to be a waiver of any other provision hereof or of any subsequent breach by either party of the same or any other provisions.

24. **AMENDMENTS:** No provision of this license may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successor in interest, expressing by its terms an intention to modify this license.
25. **SUCCESSORS:** This license shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors, and assigns of the parties hereto.
26. **PROVISIONS ARE COVENANTS AND CONDITIONS:** All provisions, whether covenants or conditions, on the part of either party shall be deemed to be both covenants and conditions.
27. **CONSENT:** Whenever consent or approval of either party is required that party shall not unreasonably withhold such consent or approval.
28. **EXHIBITS:** All exhibits referred to are attached to this license and incorporated by reference.
29. **LAW:** This license shall be construed and interpreted in accordance with the laws of the State of California.
30. **CAPTIONS AND COVER PAGE:** The paragraph captions and the cover page of this license shall have no effect on its interpretations.
31. **SEVERANCE:** If any provision of this license is determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this license, and all such other provisions shall remain in full force and effect provided, however, that the purpose of the license is not frustrated. It is the intention of the parties hereto that if any provision of this license is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.
32. **NOTICES:** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party, or any other person shall be in writing and either served personally or sent by prepaid, first-class mail. Any such notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated two (2) DISTRICT working days from the time of mailing if mailed as provided in this paragraph.

DISTRICT's address: SAN BERNARDINO COUNTY
FLOOD CONTROL DISTRICT
Flood Control Operations Division
Attention: Flood Control Permit Engineer
825 E. Third Street, Room 108
San Bernardino, CA 92415-0835

LICENSEE's address: UNITED STATES MARINE CORPS
c/o Southwest Division
Naval Facilities Engineering Command
1220 Pacific Highway
San Diego, CA 92132-5190

33. **SURVIVAL:** The obligations of the parties which, by their nature, continue beyond the term of this license, will survive the termination of this license.

34. **JURY TRIAL WAIVER:** DISTRICT and LICENSEE hereby waive their respective right to trial by jury of any clause of action, claim, counterclaim or cross-complaint in any action, proceeding and/or hearing brought by either DISTRICT against LICENSEE or LICENSEE against DISTRICT on any matter whatsoever arising out of, or in any way connected with, this license, the relationship of DISTRICT and LICENSEE, LICENSEE's use or occupancy of the Premises, or any claim or injury or damage, or the enforcement of any remedy under any law, statute, or regulation, emergency or otherwise, now or hereafter in effect, emergency or otherwise, now or hereafter in effect.

35. **ATTORNEYS' FEES AND COSTS:** If any legal action is instituted to enforce or declare any party's rights hereunder, each party, including the prevailing party, must bear its own costs and attorneys' fees. This paragraph shall not apply to those costs and attorneys' fees directly arising from any third party legal action against a party hereto and payable under **Paragraph 18, HOLD HARMLESS.**

36. **INTERPRETATIONS:** As this agreement was jointly prepared by both parties, the language in all parts of this agreement shall be construed, in all cases, according to its fair meaning, and not for or against either party hereto.

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37. **AUTHORIZED SIGNATORS:** Both parties to this Lease represent that the signators executing this document are fully authorized to enter into this agreement.

END OF CONTRACT.

**SAN BERNARDINO COUNTY
FLOOD CONTROL DISTRICT**

**LICENSEE: UNITED STATES
MARINE CORPS**

By _____
Dennis Hansberger, Chairman, Board of Supervisors
Acting as Governing Body of District

By _____

Date _____

Title _____

SIGNED AND CERTIFIED THAT
A COPY OF THIS DOCUMENT HAS
BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

Date _____

J. RENEE BASTIAN, Clerk of the
Board of Supervisors

By _____

Date _____

APPROVED AS TO LEGAL FORM:

ALAN K. MARKS, County Counsel
San Bernardino County, California

By _____
Charles S. Scolastico, Deputy

Date _____

EXHIBIT "1"

PERMIT NO. P482055

EXHIBIT "2" - INSURANCE

LICENSEE COMPLETE THIS FORM AND ATTACH A CERTIFIED COPY OF ALL INSURANCE POLICIES AND ENDORSEMENTS.

LICENSEE:

PREMISES:

TERM:

PRIMARY INSURANCE POLICY:

Name of Licensee's Insurance Company _____

Effective Dates of Policy _____

Claims Made Policy _____ Per Occurrence Policy _____

Limits of Liability _____

Deductibles:

Per Occurrence _____

Annual Aggregate _____

Additional Insured Endorsement Attached _____ Yes _____ No

Certified Copy of Policy Attached _____ Yes _____ No

EXCESS/UMBRELLA POLICY

Name of Licensee's Insurance Company _____

Effective Dates _____

Limits of Liability _____

Underlying Coverage Limits _____

Name of Underlying Company _____

Additional Insured Endorsement Attached _____ Yes _____ No

Certified Policy (Copy of) Attached _____ Yes _____ No

NOTE: If there are any questions concerning the required insurance, LICENSE contact the County Risk Management Office at (909) 386-8622.

EXHIBIT "3"

HAZARDOUS SUBSTANCES ALLOWED ON THE PROPERTY